

Hastings Law Journal

Volume 14 | Issue 4

Article 2

1-1963

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Recommended Citation

James H. Pricer and Nicholas E. Wyckoff, *Practices and Procedures of the Department of Motor Vehicles*, 14 HASTINGS L.J. 355 (1963).
Available at: https://repository.uchastings.edu/hastings_law_journal/vol14/iss4/2

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Practices and Procedures of the Department of Motor Vehicles

By JAMES H. PRICER* AND NICHOLAS E. WYCKOFF†

AMONG regulatory and control agencies of the state government of California, the Department of Motor Vehicles touches the lives, property, and prevailing customs of more of the populace than any other through the modern family's interest in motor vehicle ownership and operation.

The matters within its jurisdiction are of increasing interest to the legal profession and the courts. Maintaining largely the independent status granted by the statutes of 1931, the department is today placed in the administrative structure of the state within the Highway Transportation Agency, equal with the Department of Public Works and the Department of the California Highway Patrol. Established by statute in 1961,¹ the Agency to date has served primarily as a coordinating and policy-making administration, and as a means of communicating to the chief executive significant actions and policy questions bearing on motor vehicle usage, control, highways, and traffic law enforcement.

Departmental functions fall into four categories:² (1) Vehicle registration; (2) Driver licensing; (3) Administration of a financial responsibility law; (4) Maintaining records in all of the categories mentioned.

The concern of the legal profession will increasingly be engaged in questions arising under the driver licensing laws. The exercise of the driving privilege, or as some may prefer to regard it of the conditioned *right* to drive,³ is of increasing value in California as public transportation facilities are reduced. The public relies correspondingly

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¹ Cal. Stat. 1961, c. 2073 § 3 p. 431.

² CAL. VEH. CODE § 1505.

³ "Since motor vehicles are instruments of potential danger, their registration and the licensing of their operators have been required almost from their first appearance. The right to operate them in public places is not a natural and unrestrained right, but a privilege subject to reasonable regulation, under the police power in the interest of the public safety and welfare." *Watson v. State Division of Motor Vehicles*, 212 Cal. 279, 283, 298 Pac. 481, 482 (1931).

on the private service of the motor car and on universal access to the highways.

In this review we touch on the registration and financial responsibility functions only briefly. Our major concern is with the driver licensing authority, *i.e.*, the practice, procedure, and post-licensing controls exercised by the department.

The Driver's License: Qualifications of the Applicant and Record of the Licensee's Performance

The driver licensing process provided by the legislature protects the public safety by a screening of the competence of those who desire to drive motor vehicles on the public streets and highways. Admittedly the testing process is minimal, since over three million applications for licenses are submitted in the course of a year and ten thousand licenses are issued by the department on most working days.

The required tests given each applicant for a license include: (1) a screening of the applicant's vision; (2) a test of ability to understand simple English used in highway signs; (3) a test of knowledge of the traffic laws (a true and false test, usually written, that may in special circumstances be given orally); (4) a driving test.

The driving test is a standardized safety-screening test requiring about fifteen minutes to administer. Special driving tests may be given when unusual problems or conditions arise or as part of a re-examination deemed necessary by the department.

It is obvious that success in passing such a licensing test guarantees nothing about the performance of the licensee on the road. It is the state's experience that approximately one-third of the licensed drivers in a three year period may be expected to accumulate records of conviction or bail forfeiture on traffic offenses.

The post-licensing control measures set forth in the Vehicle Code are essentially a charge to the licensing agency to review the records of the state's licensees in terms of safety, compliance with the law, and number of accidents; and to restrict or withdraw the privilege represented by the license for various periods. The periods depend on the extent of hazard presented by the performance on record.

The driver's record on file in the Division of Drivers Licenses consists of the original application form; accident reports from official law enforcement sources; and, in by far the larger proportion, the record of the party's convictions for violating the Vehicle Code.

The documentation of the "violation record" is confined to abstracts of convictions of the pertinent offenses submitted to the department by individual courts throughout the state. The words "ticket" and "cita-

tion" are often used in this connection but this is erroneous. Anything that can properly be called either is *not* filed in the driver's record.

Thus, the evidence in the driver's record is based on court findings. The fact finding function is performed where constitutional precedent has placed it. Judgments on which departmental post-licensing control action is based are primarily court judgments.⁴ The Department of Motor Vehicles in recent years has been receiving about a quarter of a million court abstracts per month for filing with the license application forms.

Two conditions have necessarily influenced the legislature in its efforts to provide appropriate authority for the department's post-licensing control measures which govern its "Driver Improvement Program." First, the interest of public safety; and second, the enormous number of cases in which there is need for review, investigation, interview or hearings, findings and determination, and action upon the privilege represented by the license. Some two hundred thousand persons a year are affected by the program. About twenty-five thousand of these receive no more than a warning letter when their records show excessive accumulation of abstracts.

Power to Refuse to Issue a Driver's License

California Vehicle Code sections 12805, 12806, and 12807 set forth the basis for refusal to grant a driver's license to an applicant.⁵ These statutes have the effect of preserving jurisdiction. They declare clearly the basic objective of the driver licensing law; namely, that it is designed to authorize selection and rejection of applicants in the

⁴ *Ratliff v. Lampton*, 32 Cal. 2d 226, 195 P.2d 792, 10 A.L.R.2d 826 (1948).

⁵ CAL. VEH. CODE § 12805: "The department shall not issue or renew a driver's license to any person: (a) Who is not of legal age to receive such license. (b) Who, because of excessive and continuous use of alcoholic liquors, is incapable of safely operating a motor vehicle, or who is addicted to the use of narcotic drugs or an habitual user of any other drug rendering the person incapable of safely operating a motor vehicle. (c) Who is insane or feeble-minded or an idiot or an imbecile. (d) Who is an epileptic. (e) Who is unable as shown by examination to understand traffic signs or signals or who does not have a reasonable knowledge of the provisions of this code governing the operations of vehicles upon the highways. (f) When it appears by examination or other evidence that such person is unable to operate a motor vehicle upon a highway safely because of physical or mental defect or lack of skill. (g) Who is unable to read and understand simple English used in highway traffic and directional signs. The provisions of this subdivision shall not apply to any person holding an operator's or chauffeur's license issued by this State and Valid on September 11, 1957."

CAL. VEH. CODE § 12806: "Any physical or mental defect of the applicant which in the opinion of the department does not affect the applicant's ability to exercise reasonable and ordinary control in operating a motor vehicle upon the highway shall not prevent the issuance of a license to the applicant."

CAL. VEH. CODE § 12807: "The department shall not issue or renew a driver's license to any person: (a) When a license previously issued to the person under this code has been

interest of safety. It requires of applicants a showing of ability to drive without excessive danger to themselves or to others using the highways.

In subdivisions (c) and (d) of section 12807, the legislature has spelled out the necessity of the renewal applicant's compliance with his written promise to respond to a summons to traffic court and the necessity of the licensee's payment of any fine imposed by the court for a traffic violation. Failure to meet these obligations to the court is *mandatory grounds* for refusal of the license by the administrative agency.

The grounds requiring refusal set forth in sections 12805 and 12807 have mandatory force. The department may act on its own discretion under the provisions set forth in section 12809:

The department may refuse to issue or renew a driver's license to any person:

(a) If the department is satisfied that the applicant is not entitled to the license under this code.

(b) If the applicant has failed to furnish the department the information required in the application or reasonable additional information requested by the department.

(c) If the department determines that the applicant has made or permitted unlawful use of any driver's license.

(d) If the department determines that the applicant has used a false or fictitious name in any application for a license, or has knowingly made a false statement or knowingly concealed a material fact, or otherwise committed any fraud in any such application.

(e) If the department determines that the applicant is a negligent or incompetent operator of a motor vehicle.

(f) If the applicant is convicted of any offense involving the use or possession of narcotics under Division 10 (commencing with section 11000) of the Health and Safety Code.

The importance of this authority, under varying circumstances, to refuse to issue a license is emphasized by another provision in section 13359: "The department may revoke the privilege of any person to

suspended until the expiration of the period of the suspension, unless cause for suspension has been removed. (b) When a license previously issued to the person under this code has been revoked until the expiration of one year after the date of the revocation, except where a different period of revocation is prescribed by this code, or unless the cause for revocation has been removed. (c) When the department has been notified by a court that the licensee has violated his written promise to appear in court, unless the department has received a certificate signed by the magistrate or clerk of the court hearing the case in which the promise was given showing that the case has been adjudicated. (d) When the department has been notified by a court that the licensee has failed to pay a lawfully imposed fine for a violation of any provision of Division 11 (commencing with section 21000) of this code within the time authorized by the court."

operate a motor vehicle upon any of the grounds which authorize the refusal to issue a license.”

The Court's Suspension and Revocation Authority

Vehicle Code sections 13200 to 13210 set forth the court's authority to act against the driver's license by imposing periods of suspension or revocation, and to require the surrender of the license.

This is for the most part clearly at the court's discretion. The only mandatory license revocation set forth as the responsibility of the court is in the case of a person convicted of violating laws prohibiting the possession and sale of narcotics.

In section 13209 of this series the court is required to obtain from the department a record of any prior convictions of a person for violations of the traffic laws before sentencing. Section 13210 prescribes for the court a procedure it must follow to effect a partial exemption from suspension terms for a person convicted of misdemeanor drunk driving for the first time, so that for the purpose of maintaining his livelihood he may drive in the course of his employment. In this procedure the court may notify the department of its determination, and the department when so notified shall issue the restricted license “to permit him to drive an employment vehicle while in the course of his employment during specified hours of employment as determined by the court.” The restrictions must be indorsed upon the license.

Among the prescribed steps for the court set forth in subdivision (b) of section 13210, are these: the judgment rendered shall include a statement of the period of suspension of the driving privilege; a statement of the manner in which any restriction shall be imposed; and when a suspension is for a period of less than six months or is otherwise limited, a statement of the facts constituting the existence of hardship is required.

The department has no special procedure to follow when the court suspends a license. It is understood that in rendering its judgment the court usually will have required the surrender of the license to itself, and that the court will retain the license for the specified period of suspension, to be returned to the licensee when the suspension terminates. The court, in effect, suspends, retains the license document in its file, and restores the surrendered document in accord with its own determinations. The court is directed by law to file the abstract of its action with the department so that the conviction and notice of the suspension effected may become part of the record of the licensee. But in these circumstances the department takes no step to obtain surrender of the license, nor, at the termination of the suspension, to restore it.

These actions of the court against the driving privilege and, even more significantly, court actions to impose the standard misdemeanor penalties of jail terms, fines, or both upon convicted offenders against the traffic laws are clearly the court's prerogatives and come within the province of punitive justice.

The department, as licensing agency, is dependent on the record which the court, as fact-finding and sometime punitive agency, reports to the department. The department generally subserves the court's action in those instances where the court acts; and it *may* direct further action which is remedial and protective in nature.⁶

The legislature has recognized the fallibility of human communications, and in section 13203 of the Vehicle Code has provided as follows:

In no event shall a court revoke or suspend the privilege of any person to operate a motor vehicle or as a condition of probation prohibit the operation of a motor vehicle for a period of time longer than that specified in this code. Any such prohibited order of a court, whether imposed as a condition of probation or otherwise, shall be null and void, and the department shall restore or reissue a license to any person entitled thereto irrespective of any such invalid order of a court.

Another direction is taken by the legislature in its mandate to the department in section 13352 relative to the suspension and revocation of the license of a person convicted of driving a motor vehicle while under the influence of intoxicating liquor. Vehicle Code 13352 states:

The department shall immediately suspend or revoke the privilege of any person to operate a motor vehicle upon receipt of a duly certified abstract of the record of any court showing that the person has been convicted of driving a motor vehicle while under the influence of intoxicating liquor. The suspension or revocation shall be as follows:

(a) Upon a first such conviction other than section 23101 such privilege shall be suspended for a period of six months, unless the court in case of the conviction only suspends such privilege under authority of section 13201 or recommends no suspension or restricts such privilege under the authority of section 13210.

(b) Upon first such conviction under section 23101 such privilege shall be suspended for one year and shall not be reinstated until such

⁶ 7 CAL. OPS. ATT'Y GEN. 47, 48 (1946), reviewing authorities in this state and other jurisdictions and distinguishing, *People v. O'Rourke*, 124 Cal. App. 752, 13 P.2d 989, (1932) insofar as it provides: "The revocation or suspension of the operator's license is not the imposition of an additional penalty to the judgment of conviction. It is a part and parcel thereof, and under both sections 73 and 73½ of the act, insofar as they are applicable here, constitutes only that part of the legal penalty which the law inflicts as part of the judgment of conviction." See also, *Johnson v. Dept. of Motor Veh.*, 177 Cal. App. 2d 440, 2 Cal. Rptr. 235 (1960).

person gives proof of ability to respond in damages as defined in section 16430.

(c) Upon a second such conviction within seven years, such privilege shall be suspended for one year and shall not be reinstated unless and until such person gives proof of ability to respond in damages as defined in section 16430.

(d) Upon a second such conviction under section 23101 within three years, such privilege shall be permanently revoked.

(e) Upon a third or subsequent such conviction within 10 years such privilege shall be revoked and shall not be reinstated for a period of three years and until such person files proof of ability to respond in damages as defined in section 16430.

Here the legislature has undertaken to apply punitive and corrective justice. It entrusts its directive to the licensing agency, its executive, rather than to the court. The exception, of course a notable one, is in the case of the first offender, in which some discretion is lodged with the court. But it may be exercised in these cases only under the very limiting and closely conditioned provisions of 13352(a): *The court retains the privilege in the case of first offenders only, of ordering no suspension; or of suspending for a period of less than six months; or of restricting the privilege on the grounds of hardship.* [Emphasis added.]

Beyond that, the legislature has specified mandatory suspension for six months even for the first offender; and for repetitions of this offense, has imposed mandatory suspensions or revocations for much longer periods. Its executive then, in all but the specified aspects of first offense cases, is the licensing agency, the Department of Motor Vehicles.

The body of provisions governing this control activity of the department are referred to often and variously under such terms as "post-licensing control and regulation," "driver control," "driver improvement," and "negligent operator actions."

In the present observations on practices and procedures of the department, "driver control" and "driver improvement" are the terms most frequently used in referring to the program.

Driver Control Actions by Department of Motor Vehicles—Definitions

A statement of the department's basic philosophy of driver control may be of importance. The department seeks the improvement, not the drastic penalizing, of offending drivers who may violate law for a great variety of reasons. As the department understands its mandate, *a driver is entitled to consideration of his record, taking into account the*

seriousness and pattern of his violations and other circumstances in his individual case. Further, the Vehicle Code provides in most instances that a driver facing discretionary action by the department is entitled to a hearing before action can be taken against his license.⁷

In the driver control program the effort to promote safety is lodged in the taking of actions affecting the driving privilege. There are actions designed variously to improve the driving performance of poor drivers, to curb the hazardous driving of more serious offenders and repeating offenders; and to withdraw the driving privilege of those found dangerous and deemed incapable of improvement. These actions by the department are not intended to be punitive. Even when it is held to be necessary to revoke the driving privilege, the action is not taken as punishment for poor driving performance or law violation. It is taken as a necessary measure in the interest of the safety of the subject as well as of other users of the highways.

Discretionary actions are the principal concern of the driver improvement program which is carried on by a force of 122 driver improvement analysts. Of these, 100 are located in the department's field offices throughout the state. Their principal duties are to hold interviews and hearings, to conduct re-examinations, and to instigate medical and other investigations. Field analysts report their findings and recommendations to the division's Sacramento headquarters. There a staff of 22 driver improvement analysts review the work of the field analysts and make final decisions as to actions to be taken.

The state's policy regarding withdrawal or restriction of the driving privilege is to take the minimum action that can be expected to effect the needed improvement. Outright revocation of the driving privilege is ordered only as a last resort.

In discretionary withdrawal actions the driver is entitled to a hearing under Vehicle Code provisions; and it is the policy of the department to provide a hearing before it takes action unless the necessity for immediate action in the interest of safety is indicated. A summary suspension or revocation may be ordered under the Vehicle Code.⁸

A court review of any action of the department is also provided for by law. This is set forth in section 14400 which reads: "Nothing in this

⁷ CAL. VEH. CODE § 13950.

⁸ CAL. VEH. CODE § 13953: "[I]n the event the department determines upon investigation or re-examination that the safety of the person subject to investigation or re-examination or other persons upon the highways require such action, the department shall forthwith and without hearing suspend or revoke the privilege of the person to operate a motor vehicle or impose reasonable terms and conditions of probation which shall be relative to the safe operation of a motor vehicle. . . ."

code shall be deemed to prevent a review or other action as may be permitted by the Constitution and laws of this State by a court of competent jurisdiction of any order of the department refusing, canceling, suspending, or revoking the privilege of a person to operate a motor vehicle."

TYPES OF WITHDRAWAL DEFINED

Revocation (Mandatory or Discretionary)

Under this action the driving privilege and driver's license are terminated. Revocation may be for a fixed period of time, or for an indefinite period until the cause of revocation no longer exists, or until certain conditions are met.

A license certificate surrendered when the driving privilege is revoked will not be returned upon reinstatement of the driving privilege unless the reinstatement has been made by the "setting aside" of the revocation.

Suspensions (Mandatory or Discretionary)

"Suspension" means that the driving privilege and license are temporarily withdrawn. This may be for a fixed period of time or indefinitely until certain conditions or requirements are met. Upon termination of the suspension the withdrawn license will be returned if still valid.

Refusal (Mandatory or Discretionary)

"Refusal" means that the department is forbidden by law to issue or renew a license (mandatory) or has decided not to issue or renew a license (discretionary). Such action does not bar the applicant from making a new application for a license.

Cancellation (Mandatory or Discretionary)

"Cancellation" means that the driver's license certificate is terminated without prejudice. The driving privilege is not affected and the driver may re-apply at will.

Withholding

"Withholding," a term related to the provisions for "refusal," means that the department must not, or may not, issue a license or return any license in its possession, for example, to a driver who has failed to appear in court after signing a citation for a traffic violation or who has failed to pay a traffic fine.

Probation (Discretionary only)

"Probation" means that in a situation wherein grounds for with-

drawal of the license exists, the department uses its discretionary authority to take a lesser action and continues the driving privilege. This is done by placing the driver on probation and issuing a probationary license with such reasonable terms and conditions as the department deems appropriate.

Hearings by Department of Motor Vehicles

Section 13950 of the Vehicle Code provides that before a discretionary withdrawal action may be taken the licensee affected must be advised that such action is contemplated and shall be given an opportunity to be heard before the action is taken.⁹ (An exception is the authority granted by section 13953.)

In its driver improvement program, the department conducts both informal and formal hearings.¹⁰ When an *informal hearing* is scheduled, the affected driver is given 10 days notice, and is advised of his right to request a formal hearing if he so desires. During the informal hearing, at which a driver improvement analyst acts as a referee, the subject is confronted with his driving record in documented form and has an opportunity to register objections to the record and to state his case. Following such a hearing a recommendation concerning what action, if any, should be taken is made by the interviewing analyst. A subsequent review of the case is made by a "review analyst" at headquarters, who authorizes whatever action is deemed necessary.

In driver control cases formal hearings are comparatively rare and are scheduled only upon the driver's request. A formal differs from an informal hearing in that a board, consisting of one or more driver improvement analysts or other officers or employees of the department, is appointed by the director to hold the hearing. A transcript of the formal hearing is made and a proposed decision is prepared by a hearing officer. The final decision on the action to be taken following the hearing is the responsibility of the director of motor vehicles.

The majority of hearings conducted under the driver improvement program are of the informal type and are concerned with contemplated withdrawals. Hearings may also be held for the purpose of considering the reinstatement of a previously withdrawn driving privilege.

⁹ *Ratliff v. Lampton*, 32 Cal. 2d 226, 195 P.2d 792, 10 A.L.R.2d 826 (1948).

¹⁰ "When the department gives notice that it considers revoking or suspending a license and of the right to a hearing and there is a failure to request a formal hearing and an informal hearing proceeds, it is not a denial of due process." *Beamon v. Department of Motor Vehicles*, 180 Cal. App. 2d 200, 4 Cal. Rptr. 396 (1960).

Types of Discretionary Departmental Actions

There are two general types of discretionary withdrawal actions taken by the department. These are negligent operator cases, and physical and mental disability cases.

Negligent Operators

Negligent operators are defined on the basis of a violation point system set forth in section 12810 of the Vehicle Code.¹¹ In determining the violation point count many violations, such as parking, are not counted and are not reported by the courts. Most violations count one point. The same weight is given to each accident for which the department deems the driver responsible. A few major violations of Vehicle Code statutes—reckless, or hit-and-run driving, among them—have a point value of two.

A driver whose record shows an accumulated violation point of 4 or more in the preceding 12 months, 6 or more in the past 24 months or 8 or more in the previous 36 months is presumed to be a negligent operator.¹² The department does not take a withdrawal action solely on the basis of the point count, but uses it as a screening standard to pull records for consideration of action under the driver improvement program.

Physical and Mental Cases

Section 12805 of the Vehicle Code prohibits the department from issuing a driver's license to any person suffering from certain physical or mental disabilities. However, section 12806 qualifies this prohibition by stating that "Any physical or mental defect which in the opinion of the department does not affect the ability to exercise reasonable or ordinary control of a vehicle shall not prevent the issuance of a license." Thus, the department is given broad discretionary power in the handling of physical and mental cases. Under its control program the department relies heavily on professional medical and psychiatric advice in evaluating these cases.

The department is prohibited by the Vehicle Code from divulging any information concerning the physical and mental data contained in

¹¹ The following violations are given the weight of two points: (a) Driving when license refused, suspended or revoked. (b) Failing to comply with requirements in accidents resulting in property damage or upon striking an unattended vehicle. (c) Driving under the influence of liquor and any drug. (d) Reckless driving.

Another traffic conviction involving safe operation of a motor vehicle or involvement in an accident if the licensee is deemed responsible by the department is given one point.

¹² *Johnson v. Department of Motor Vehicles*, 177 Cal. App. 2d 440, 2 Cal. Rptr. 235 (1960).

driving records in its files. The propriety of this declared confidentiality has been challenged in relation to public policy which generally favors free access to all or most state records as public records. To date, the legislature has continued to hold that access to such data relative to the physical and mental condition of individuals offers too great a hazard of exploitation to be declared public.¹³ The statute provides the department with authority to require the information which may be determining in questions of safety in issuing driver licenses in specific problem cases. But the inference is that this information is to be used solely for driver licensing purposes. It may not be sold to be used for possible profit in such connections as the determination of insurability, employability, or other crucial relations affecting livelihood and civil status.

A significant estimate of the state's functioning in the negligent operator phases of post-licensing driver control may here be quoted from a report financed by the Ford Foundation, on a study of California traffic law administration:¹⁴

[I]n the areas covered by the negligent operator sections of the Vehicle Code, . . . the complementary functioning of the Department and the courts has proved more satisfactory in promotion of public safety than could the operation of either agency alone. These provisions allow the Department, in its discretion, to revoke or suspend the license of the driver who amasses a certain number of convictions in a given period of time. The Department is able to follow a careful procedure for checking the statewide record of each driver, is not subject to the local pressures often brought to bear on the judges, and may formulate a uniform policy which prevents discrimination. These factors combine to provide an element of certainty and consistency sometimes lacking in the courts. It is noteworthy that the courts have uniformly praised this activity of the department.

Mandatory Withdrawals

Mandatory withdrawal actions are of three types.

General Mandatory Actions are taken to protect the public from drivers who have been convicted of certain major violations and have thus demonstrated that they are dangerous to themselves and others. Drunk driving and narcotic offenses are prime examples.

Financial Responsibility Actions are taken to protect the public from drivers unable to meet the costs of damages they may impose on

¹³ The Department of Motor Vehicles is required to give reasonable access and right of inspection to portions of drivers license application files, which are public records, but records relating to physical or mental condition of applicants are confidential and not open to public inspection. 26 CAL. OPS. ATT'Y GEN. 136 (1955).

¹⁴ Comment, 12 STAN. L. REV. 388, 432 (1960).

others in reportable highway mishaps.¹⁵ Failure to post the security required by Division 7, Chapter 1 of the Vehicle Code after involvement in an accident may be cause for suspension action. Driving in the course of employment is not affected by a financial responsibility suspension.

Unsatisfied Judgment Actions are taken to protect the public from persons who have been found responsible for accidents and who have failed to pay judgments decreed by the courts. Such actions affect the driving privilege and the privilege of registering any vehicle with the department.

Mandatory withdrawal actions are processed entirely at the Sacramento headquarters of the department. There is no field participation except that in some instances the assistance of investigators, analysts or examiners is required for the serving of the orders.

Restorations—or Reinstatements

In considering driver control there is a tendency to think only of actions which withdraw or curtail the driving privilege: revocations, suspensions, imposing of probation. Equally important, however, in the department's operation (and most certainly so from the driver's point of view) are the reinstatement and termination actions which restore the driving privilege previously withdrawn or curtailed.

Section 13352(d) of the Vehicle Code provides for the permanent revocation of the driving privilege upon a second conviction of felony drunk driving within three years.

The occasions for taking this drastic action are rare. In all other instances withdrawals of the driving privilege are for a stated term or until certain requirements have been met. Thus, every withdrawal action presupposes a possible reinstatement action at a future date.

Mandatory Restoration Actions

Restoration of a previously withdrawn driving privilege is mandatory when: (1) A term of suspension or revocation has been in effect for the full period prescribed, and (2) A driver has met some requirement such as the filing of proof of financial responsibility, or his appearance for a re-examination. Mandatory restorations are processed entirely at the Sacramento headquarters with no field participation and minimum of participation by the driver improvement analysts.

Discretionary Restoration Actions

Reinstatement of the driving privilege is discretionary when the

¹⁵ Escobedo v. Department of Motor Vehicles, 35 Cal. 2d 870, 222 P.2d 1 (1950).

department determines that the grounds for a previous withdrawal action no longer exist or never actually existed. For example, a driving privilege withdrawn because of a physical condition may be subsequently restored if an improvement in the driver's condition justifies such action. Such reinstatements often require the filing of periodic medical reports testifying to the driver's condition in relation to his ability to operate a vehicle.

With very few exceptions, the determination relative to a discretionary restoration is made by driver improvement analysts at Sacramento, with or without investigation and personal contact by a field analyst conducting an interview.

Types of Restorations Defined

Termination (Mandatory or Discretionary)

"Termination" means that an existing withdrawal action is ended unconditionally. However, another outstanding withdrawal action may still be in effect.

Reinstatement (Mandatory or Discretionary)

"Reinstatement" in specific usage means that an existing withdrawal action is ended subject to some condition or requirement such as the filing and maintaining of proof of financial responsibility.

Setting Aside (Discretionary only)

A "setting aside" is a specialized type of termination used only when it is determined that the grounds for an existing withdrawal action never actually existed. A setting aside enables the department to return the withdrawn license without requiring a new application or fee.

Probation

"Probation," as a restoration action, is always combined with reinstatement. It differs from the withdrawal probation already described in that it proceeds from the status of revocation rather than from the status of unimpaired privilege. In either case the end result is the same, a privilege restricted to compliance with terms of probation.

Procedures Under the Financial Responsibility Law

One of the more complex functions of the Department of Motor Vehicles is the administration of the Financial Responsibility Law which is closely related to questions of liability of driver and owner

in accident cases and ability to respond in damages. Many interesting legal questions arise in applying the governing statutes. In general, California to date has adhered to this "safety responsibility" type of legislation (as it is called in some other state jurisdictions), rather than to a compulsory insurance type, or to an unsatisfied judgment type. This is in harmony with an apparent philosophy of holding to the maximum of liberty and option, and conversely to the minimum of compulsion, in the writing of the necessary public safety statutes.

The objectives of the California Financial Responsibility Law may be summarized as follows:

1. To provide the means whereby persons injured or damaged in motor vehicle accidents can secure financial redress for injuries or damages when they are entitled to recover.
2. To remove financially irresponsible motorists from the highways or to insure that they prove their financial responsibility before they resume driving.
3. To remove uninsured vehicles involved in accidents from the highways unless their owners or drivers establish that they are financially responsible.

Reporting of accidents to the licensing and registering agency, and posting of security as it may determine, are major requirements of the statute.

The driver of every vehicle involved in an accident originating from the operation of a motor vehicle on a street or highway within the state must file with the department a report of injury or damage if the accident resulted in either or both of the following:¹⁶ (1) Property damage suffered by any one person in excess of \$100; or, (2) Bodily injury to or death of any person.

The department may only take action on behalf of damaged or injured parties if the party reports the damage or injury within fifty days from the date of the accident. Bodily injury may be reported regardless of an estimated amount of damage in monetary terms. Property damage reported must be in excess of \$100 to bring the provisions of the statute into effect. A driver involved in a reportable accident during the course of employment must report the accident to his employer, who in turn must report it to the department.

The first Financial Responsibility Law enacted in California took effect on August 14, 1929. This applied to unsatisfied judgments

¹⁶ CAL. VEH. CODE § 16000.

arising out of automobile accidents. The Financial Responsibility Law more widely known today was enacted by the legislature in 1947 and became effective on July 1, 1948.

Under the provisions of the Financial Responsibility Law, as defined in Division 7 of the Vehicle Code, a driver must show responsibility for damages resulting from a traffic accident. Failure to do so by one of several means available can result in the withdrawal of the driving privilege by the department.

Actions taken under the Financial Responsibility Law are *mandatory* and not discretionary. The date of suspension is set by statute at 76 days from the receipt of the accident report. In order to avoid the suspension provisions of this program, drivers who have been involved in reportable accidents may make a security deposit. (Exemption from the security requirements may be made by various means, the most frequent being liability insurance coverage.)

The intent of the security deposit requirement is often erroneously understood to be substantially that of a fine or penalty imposed by the department upon an admission of fault by the depositor. This is not so. There are no punitive implications in the statute nor is there any attempt by the department to establish driver negligence for accidents.

Security deposits received by the department under the Financial Responsibility program are deposited with the state treasurer in a trust fund account and amount to about \$1,200,000 a year. The cash or bond security deposits may be paid by the department to the injured or damaged party in the following instances: (1) Upon receipt from a court of a final judgment against the depositor and in favor of the injured or damaged person. (2) Upon receipt of authorization from the depositor directing the payment to the injured or damaged person.

Disbursement of security deposits to a claimant is made on the basis of the department's evaluation of his injuries or the damages he has suffered. If the amount of security deposited on his behalf exceeds the judgment amount, the balance of the deposit is returned to the depositor. If the security amount disbursed to a claimant as a result of the department's evaluation is less than the judgment amount, the difference must be obtained by other means.

If a judgment has been rendered for which no security has been deposited, the department is *required* to take action to withdraw the license under an unsatisfied judgment provision. If no judgment has arisen from an accident and no suit is pending after a year from the date of the accident, the security deposit is refunded to the depositor upon request.

Exemptions from Security Requirements

Exemption from the security deposit requirements of the Financial Responsibility program are obtained by exercising one of several options. Approximately 86% of all persons involved in reportable accidents exempt themselves from depositing security by submitting evidence of liability insurance coverage. Insurance or bonding companies file "Employers Insurance Certificates" with the department certifying that an employer's vehicles have liability insurance coverage. The filing of these certificates exempts employers from reporting accidents to the department. It is necessary, however, for employers to file reports if they wish the department to take action on their behalf.

Exemption from the security deposit requirements may also be established by filing with the department evidence that:

- (a.) The motor vehicle involved in the accident was owned by or leased by or under the direction of the United States, this state, or any political sub-division of the state, or municipality thereof.¹⁷
- (b.) No injury or damage was caused in the accident to the person or property of any one other than such driver, his employer, or the owner of the vehicle.¹⁸
- (c.) At the time of the accident the vehicle was legally parked.¹⁹
- (d.) The driver, employer, or owner has been released from liability by all other persons reporting injury or damage as a result of this accident.²⁰
- (e.) All judgments that may arise out of damages or injuries sustained in the accident have been rendered in favor of the driver or have been satisfied by him.²¹
- (f.) A duly acknowledged settlement agreement with respect to all damages or injuries arising from the accident has been executed by the driver, employer, or owner, from whom security has been required.²²
- (g.) A payment has been made by or to an insurance company for the property damages arising as a result of the accident.²³

¹⁷ CAL. VEH. CODE § 16051.

¹⁸ CAL. VEH. CODE § 16052.

¹⁹ *Ibid.*

²⁰ CAL. VEH. CODE § 16053.

²¹ *Ibid.*

²² *Ibid.*

²³ CAL. VEH. CODE § 16054.

When a driver has failed, within 50 days after an accident, to establish his exemption from security, and has failed to deposit security within 10 days after notice by the department specifying the amount of security, the department *must* suspend his driving privilege. These suspensions, which apply both to residents and non-residents, become effective not later than the seventy-sixth day after receipt by the department of the accident report.

The suspension of the registration of the vehicles involved in accidents also occurs under the same conditions.

The suspension of a driver's license under this law does not suspend the privilege of driving in the course of employment. Therefore, *if requested, a limited license for use during employment may be issued by the department endorsed to permit driving in the course of employment only.*

Suspension and revocation withdrawal orders sent to drivers demand the surrendering of drivers' licenses to the department. In addition to the surrendering of the driver's license, financial responsibility suspension may also require the forwarding to the department of registration documents for vehicles owned by the driver. If the surrender provisions of a withdrawal order are not complied with, a form is prepared instructing a departmental investigator to contact the driver for the purpose of obtaining the driver's license, the vehicle registration papers, or both, as the case may be. Such forms are called "briefs" and they are served on the subject by the investigations section of the department's Division of Registration.

As with withdrawals in the driver control operation, financial responsibility suspensions are directed against the driving privilege as well as against any licenses evidencing the privilege. Reinstatement of the driving privilege may be obtained within one year from the date of the accident by depositing security, or by the claiming of exemption from the deposit requirement. From the second through the fourth year from the date of accident reinstatement may be obtained only upon the filing of proof of ability to respond in future damages (usually liability insurance). This may be done only if there is no evidence of a suit pending as a result of the accident. After four years from the date of the accident an affidavit may be filed with the department to terminate the proof requirement.

The Vehicle Code statutes establish a time schedule for the filing of reports by drivers and related departmental processing. Drivers must report damages or injuries within 15 days after the accident.²⁴

²⁴ CAL. VEH. CODE § 16000.

In order to have security requested in his behalf, a driver must submit evidence as to the amount of damages he has sustained *within 50 days* from the date of the accident.²⁵ Drivers failing to deposit security, or to exempt themselves from security *within 76 days* from the date of the receipt of the first damage and injury report, are suspended.

The Financial Responsibility program is served by a staff of 153 persons of which 32 are damage and injury evaluators. Their principal duties are to make evaluations based on the property damage and bodily injury reports submitted. They also act upon releases, agreements, and other documents that may be received. The evaluation staff must place a dollar value on reported injuries and damage to enable the department to require security on orders of suspension issued.

Occupational License Actions

In handling cases involving automobile dealers or wreckers, private driving schools, or vehicle salesmen, the department more frequently calls the formal, rather than the informal, type of hearing under the Administrative Procedure Act with a hearing officer supplied by the Office of Administrative Procedure of the State Department of Finance.

The legislature has declared the department to be responsible both for the licensing and the regulation of the firms and persons engaged in occupations related to motor vehicle ownership, usage, and operation. The department is directed to establish suitable rules and regulations for inclusion in Title 13 of the State Administrative Code, a procedure that involves public notice; or, in emergency rule adoptions, a public hearing; and the filing of the regulations with the Office of Administrative Procedure which files them with the Secretary of State.

In each case the department has worked closely with interim committees of the legislature, with research and study consultants, with representatives of the occupations concerned, and with the attorney general, in preparing its proposed regulations. The enabling legislation itself, in these cases, has been supported by the industries concerned.

The department then must function as *inspector* of the parties it has licensed to operate in these occupations, and as *enforcer* of the regulations drawn up for Title 13. To meet these (and other) responsibilities, the department maintains a staff of investigators with peace officer powers.

There are approximately 7,630 automobile dealer firms licensed by the department to do business in the state. The number of vehicle salesmen licensed is about 20,700. There are approximately 1,855 wrecker

²⁵ CAL. VEH. CODE § 16020.

firms. And there are approximately 160 licensed private (professional or commercial) driving schools in California with approximately 400 licensed instructors.

To qualify for licensing, persons in these occupations must have established places of business; must show financial responsibility, insurance, or safety provisions; and personnel must show good moral character.

The investigations section, numbering some 200 persons, is administratively within the department's Division of Registration. This is due to the fact that, from its inception, the greater number of its duties have been in the field of enforcing registration laws and inspecting the books (Dealers Reports of Sale) which are supplied to automobile dealers by the department.

The purpose of the department's service in providing these books of forms is to facilitate the compliance of dealers with the statutes requiring prompt notice (within 10 days for new cars, within 20 days for used cars) to the department upon transfer of motor vehicles sold by them. The law makes the purchaser the party responsible for reporting the transfer of title. The legislature recognizes the fallibility of automotive-minded man, and the dealer is provided with the forms. In practice the department accepts from the dealer's hand the registration and title application documents, and the fees, that technically are due from the buyer.

The responsibility thus entrusted to the dealer in an important transaction is considerable. The recording of vehicle title and mortgage rights is an essential protection to the public against the possibilities of theft, fraud, and other abuses in such a widespread industry.

By far the greater number of violations found in the course of inspecting the dealers' books are failures to meet the reporting date deadlines. Accordingly, these are designated "misuse" of forms when it is necessary to file charges. In such misuse the public suffers less directly than might be assumed. It suffers more from loss of revenue which would accrue to the state for funding of regulatory and protective services than from direct loss of money. A post-dating of a report of sale, which then renders the report apparently compliant with law and regulation, obviously postpones the state's receipt of its registration, vehicle license, and transfer (or title recording) fees. This violation also suggests that an attempt is being made to evade the payment of the \$3.00 "misuse fees" added for each delinquent filing.

The terms of probation often imposed when a misuse is determined may require a strict observance of, and compliance with, the statutes

and regulations applicable to the offender. If the laxity or violation becomes habitual, a temporary closing of the business may be imposed.

Violations amounting to fraud or other felonious offenses are usually brought to the attention of public prosecutors by the department, the attorney general, or by complaint to the police from persons who have suffered damage.

Parallel situations, insofar as departmental policing action is concerned, may arise among the licensed automobile wreckers. Again the major point of compliance at issue is timeliness in reporting to the department the dismantling or scrapping of any vehicle and the return to the department of all evidence (indicia) of the former registration of the vehicle.

The investigation and control of the commercial driving schools is a much smaller operation but is important in that the calibre of driving instruction received by persons operating motor vehicles bears directly on the safety of life and limb on the highway. The regulatory and inspection authority in this function is lodged with the department's Division of Field Office Operation, which administers the regulatory policies laid down by the Director of Motor Vehicles and the Chief of the Division of Drivers Licenses, together with the Field Office Chief. The driving school and instructor license fees, the screening of instructors' qualifications (including the status of their drivers' licenses), and the requirements to show safe automotive equipment and adequate insurance, have raised the standards of the calling to the obvious advantage of the public. Authority to call a hearing on any instructor's qualifications, including a showing of good moral character, is important. As in the case of the vehicle salesman (and, most recently, the ambulance driver), a referral to FBI and CII records is in order, and the public is thereby protected from exposure to persons with significant police records in these sensitive occupations.

Conclusion

To complete this review of the many practices and procedures of the Department of Motor Vehicles that affect various concerns of clients of the legal profession, and of the legal profession itself, it may be well to reaffirm that in any action of the department affecting the interest of any individual, the individual may be, but need not be, represented by counsel. This is true from the point of filing an application for a license or a registration, to the point of purging records in file and from the point of design and manufacture of a vehicle, to the point of its dismantling.

It has been pointed out in the course of this summary, and may be restated here, that any action of the Department of Motor Vehicles is subject to court review at the petition of the individual concerned and here representation by counsel will be indicated.

The majority of the department's actions resulting from informal hearings offer little occasion for representation by counsel. The greater number of such hearings, or interviews, are called for the purpose of confronting the individual driver with the abstracts of his court convictions of traffic law violations. The end sought is driver improvement. The department's designation of its post-licensing control program by this name is appropriate.

The concept of driver improvement as a major public safety procedure has grown nationally with the usage of the motor vehicle. Its sponsors and developers include the National Safety Council, the American Association of Motor Vehicle Administrators, other professional associations and foundations, legislative study committees, and the various state jurisdictions charged with licensing, regulation, and control responsibilities. Research and exploration in the field have been carried on by such responsible institutions as Northwestern University, Cornell University, New York University, University of California, and other major institutions.

Activation of the most promising recommendations resulting from such research, by legislation, administration, and also an increasingly significant body of case law, is a trend that must surely merit encouragement by any public spirited body of citizens.